

REMARKS/ARGUMENTS

Claims 17, 22-23, 26-27, 29-31, 34, 37, 39 and 58-63 have been amended. Claims 1-16, 18-21, 24-25, 32-33, 35-36, 40-45, 47-48 and 57 have been canceled. Claims 65-77 have been added. Claims 17, 22-23, 26-31, 34, 37-39 and 58-77 are pending. These amendments and new claims add no new matter as the claim language is fully supported by the specification and original claims. Reconsideration of the application is respectfully requested in view of the above amendments and the following remarks.

Claim Objection

Claim 29 is objected to because of the following informalities: misspelling of the word "advance" in line 3.

Applicants have amended claim 23 to correct the spelling and overcome this objection.

Claim 41 is objected to because of the following informalities: misspelling of the word "moveable" in line 7.

Claim 41 has been canceled, rendering this rejection moot.

Claim Rejections under 35 U.S.C. § 112

Claims 41-45, 47-48 are rejected under 35 U.S.C. 112, second paragraph. Claim 41 recites the limitation "said at least one place" in lines 8-9. There is insufficient antecedent basis for this limitation in the claim.

Claims 41-45, 47-48 have been canceled, rendering this rejection moot.

Claim Rejections under 35 U.S.C. § 102

Claims 1-13, 15, and 16 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Gauthier (U.S. Patent No. 3,695,890).

Claims 1-13, 15, and 16 have been canceled, rendering this rejection moot.

Rejections Under 35 U.S.C. §103

Claim 14 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gauthier in view of Koros et al. (U.S. Patent No. 5,944,658).

Claim 14 has been canceled, rendering this rejection moot.

Allowable Subject Matter

Claims 17-40 and 57-64 are allowed.

Applicants have amended claims 17, 22-23, 26-27, 29-31, 34, 37, 39 and 58-63 to remove unnecessary limitations. For example, in claims 17 and 58, the limitation for “first and second anchors engageable to first and second vertebrae of the spine” was removed. Also, some terms in the claims were amended, for example, the terms “first distractor mechanism” and “second distractor mechanism” were replaced with the term “plurality of retractors”. The specification indicates that the term “retractors” also includes distractor mechanisms. See for example, paragraph [0032], “Distractor mechanisms 320 . . . may include a retractor portion 332 adapted to contact and retract adjacent tissue.”, and paragraph [0040], “Distractor mechanisms 320 each include retractor portion 332”. Also, many of the claims describe the adjustment mechanism with respect to the distractor mechanism. In light of the changes discussed above, many of the claims were amended to describe the adjustment mechanism with respect to the retractors. Support can be found in the specification, see for example, paragraph [0042], “Adjustment mechanisms 70 provide a pivotal coupling arrangement with each of the retractors 120, 220 and distractor mechanisms 320 that facilitates pivotal adjustment of the retractors 120, 220 and distractor mechanisms 320 in their operative position in the patient. Adjustment mechanism 70 will be described with reference to distractor mechanisms 320, it being understood that retractors 120, 220 may include a similar proximal end configuration with flanges for coupling with the adjustment mechanism 70 extending therefrom.” These amendments add no new matter as the claim language is fully supported by the specification and original claims. The dependent claims were also amended in response to the changes.

Applicants believe the amended claims are still allowable over the prior art. For example, in regard to Koros et al. (U.S. Patent No. 5,944,658), the claims include “at least one

adjustment mechanism", numbered as 70, and FIGS. 1-6 show an adjustment mechanism 70 secured by a clamping device 40, which in turn is secured with the frame 21, 23, 25, 27.

Claim 17 requires a system including a frame, a plurality of retractors, and "at least one adjustment mechanism engageable with at least one of said retractors," a shaft "pivotally coupled with said at least one of said retractors at a pivoting coupling location adjacent a proximal end of said at least one of said retractors" thereof, "said pivoting coupling location toward said frame portions" and "movable along said frame portions" and "operable to engage said adjustment mechanism to said frame portions." Koros fails to teach many of these limitations. For example, Koros is not entirely clear on the operation of its purported "tilt" feature. Also, claim 17 requires a shaft "pivotally coupled with said at least one of said retractors". In Koros, the closest thing to a "shaft" would have to be the screws 84 and 86: however, each of these is threadably coupled with the distractor mechanism, at best. For many of these same reasons claim 58 should also allowable over prior art. Much of this is discussed in the Pre-Appeal Brief Request for Review, filed on July 21, 2009, the contents of which are incorporated by this reference.

New Claims

Dependent claims 65-77 have been added. These new claims add no new matter as the claim language is fully supported by the specification and original claims.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees associated with the filing of this paper, or credit any overpayment, to Deposit Account No. 50-4978.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 760-494-6835.

Respectfully submitted,



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